

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

AZTECA AVIATION, INC.

FAA Order No. 99-10

Served: August 31, 1999

Docket Nos. CP97SW0024 and
CP98SW0015

**ORDER DIRECTING COMPLAINANT TO WITHDRAW
THE ORDERS ASSESSING CIVIL PENALTY AND
REMANDING THESE CASES TO THE OFFICE OF HEARINGS**

By Order dated December 7, 1998, Administrative Law Judge Burton S. Kolko dismissed these cases with prejudice and terminated these proceedings based upon his understanding that the parties had settled these cases.¹ A few days later, Jerry Morelock, Azteca Aviation co-owner, President and Director of Operations, wrote to the law judge, stating that neither his attorney nor he had agreed "to withdraw from our continued effort to defend Azteca in this matter."² In a reply addressed to the law judge, Complainant has

¹ By letter dated December 1, 1998, the agency attorney wrote to the law judge as follows:

The cases referenced above [Docket Nos. CP97SW0024 and CP98SW0015] were settled on October 15, 1998. Respondent's attorney of record indicated on November 2, 1998, that he would notify the Docket and the Honorable Barton (sp) S. Kolko of the settlement. As of this date, counsel for the FAA is not aware that Respondent's attorney of record has filed any document notifying the docket or Judge Kolko of the settlement.

² Letter by Jerry Morelock to the Hon. Burton S. Kolko, dated December 11, 1998.

indicated that it is prepared to withdraw the previously issued Order³ Assessing Civil Penalty with Waiver "in the interest of justice." The law judge construed Mr. Morelock's letter as a motion to reopen the matter and forwarded the letter and the reply to the Hearing Docket.

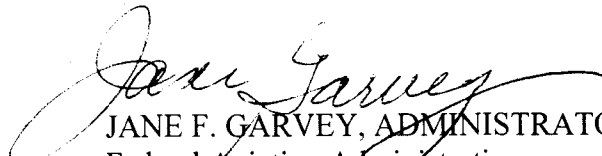
Complainant is ordered to withdraw the orders assessing civil penalty with waiver of monetary penalty. There is nothing in writing memorializing a settlement in which Complainant would issue orders assessing civil penalty with a finding of violations and a monetary waiver in exchange for Azteca withdrawing its requests for hearing. Neither Azteca nor its attorney ever actually withdrew the requests for hearing. The copies of correspondence submitted by the agency attorney do not indicate that a settlement was reached.⁴

³ Complainant refers to only one order in its letter dated December 22, 1998, as well as in the attached chronology of events. Complainant attached only one order assessing civil penalty, in FAA Docket No. CP98SW0015. In another attachment, a letter to Azteca attorney Brad Miller, Esq., the agency attorney noted that she was enclosing copies of the Orders of Civil Penalty with waiver of monetary amount in FAA Docket Nos. CP97SW0024 and CP98SW0015. Hence, it is presumed that the agency attorney issued a separate Order Assessing Civil Penalty in each of these cases.

⁴ By letter dated August 31, 1998, counsel for Azteca indicated that his client was unable financially to pay for defending itself in these civil penalty matters, and that his client was willing to surrender its air carrier certificate in order to resolve these proceedings. The agency attorney replied in a letter dated September 14, 1998. In that letter, the agency attorney noted that Azteca's counsel had indicated during a telephone conversation a few days earlier that Azteca would not appear at the scheduled hearing due to its financial situation, and had offered to return the company's certificate. The agency attorney noted further that Azteca's willingness to surrender the company's certificate did not affect the FAA's intention to proceed to hearing. The agency attorney explained that if Azteca withdrew the requests for hearing, she would issue an order with findings of violation and either a partial or total waiver of the civil penalty, depending upon the results of a review of Azteca's financial situation.

There is no indication in the chronology of events prepared by the agency attorney that Azteca or its counsel agreed to withdraw the requests for hearing between September 14, 1998, (the date of the agency attorney's letter noting that there would be findings of violation) and October 15, 1998 (when the Orders Assessing Civil Penalty were issued).

This matter is remanded to the law judge for further proceedings.


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued on this 23rd day of August, 1999.